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3 UNITED STATES DISTRICT COURT  
4 WESTERN DISTRICT OF WASHINGTON  
5 AT SEATTLE

6 BAO XUYEN LE, as Personal  
7 Representative of the Estate of Tommy  
8 Le; HOAI "SUNNY" LE; and DIEU HO,

9 Plaintiffs,

10 v.

11 REVEREND DR. MARTIN LUTHER  
12 KING, JR. COUNTY, et al.,

13 Defendants.

C18-55 TSZ

MINUTE ORDER

14 The following Minute Order is made by direction of the Court, the Honorable  
15 Thomas S. Zilly, United States District Judge:

16 (1) Plaintiffs' motion in limine, docket no. 154, is GRANTED in part,  
17 DENIED in part, and DEFERRED in part, as follows:

18 A. Motion to exclude or limit the testimony of Kevin Hernandez, Zach  
19 Schwiethale, and Anthony Rice is DENIED.

20 B. Motion to preclude lay witness opinions regarding whether Deputy  
21 Molina was reasonable in using lethal force against Tommy Le is GRANTED.  
22 Lay witnesses may testify about whether they believed the officers' lives were in  
23 danger, but not whether the use of lethal force was reasonable or justified.

C. Motion to exclude testimony about knives found in Tommy Le's  
room is GRANTED.

D. Motion to exclude evidence concerning drugs found in Tommy Le's  
room is GRANTED. Motion to exclude Tommy Le's journal is DEFERRED to  
the Pretrial Conference. The journal might be relevant with regard to damages.  
No mention shall be made of the journal until further order of the Court.

E. Motion to exclude Exhibit 6 to the deposition of Zach Schwiethale is  
GRANTED.

1 F. Unopposed motion to exclude any criminal charges, arrests, or  
2 convictions of witnesses is GRANTED subject to Federal Rule of Evidence 609.

3 (2) Defendant Reverend Dr. Martin Luther King, Jr. County's motion in  
4 limine, docket no. 153, in which defendant King County Deputy Sheriff Molina joins, is  
5 GRANTED in part, DENIED in part, STRICKEN in part, and DEFERRED in part, as  
6 follows:

7 1. Motion to exclude reference to King County's self insurance or  
8 indemnification policies is GRANTED, provided that the Court will reconsider if  
9 Deputy Molina testifies about his lack of ability to pay an award.

10 2. Unopposed motion to exclude evidence regarding any past  
11 complaints, prior use of force, or unrelated investigations or discipline of the  
12 involved deputies is GRANTED.

13 3. Unopposed motion to exclude any argument that jurors should place  
14 themselves in plaintiffs' position is GRANTED.

15 4. Motion to exclude reference to plaintiffs' motivations for bringing  
16 suit is GRANTED.

17 5. Unopposed motion to exclude evidence regarding settlement  
18 negotiations is GRANTED.

19 6. Unopposed motion to exclude reference to the number of attorneys  
20 employed by King County is GRANTED.

21 7. Motion to exclude reference to recent police-involved shootings of  
22 civilians and related protests is DEFERRED to the Pretrial Conference.

23 8. Unopposed motion to exclude reference to motions filed and argued  
before the Court is GRANTED.

9. Motion to exclude evidence that alternative means or tactics should  
have been used prior to the attempted arrest of Tommy Le is DENIED.

10. Unopposed motion to exclude reference to police body cameras is  
GRANTED.

11. Motion to exclude reference to the policies of the King County  
Sheriff's Office is DENIED.

12. Motion to exclude use of inflammatory terminology and remarks is  
GRANTED in part as to the terms "murder," "illegal shooting," and "conspiracy  
of silence." Except as granted, the motion is DENIED.

1           13. Motion to exclude reference to plaintiffs' dismissed claims is  
2 GRANTED. Motion to exclude evidence of alleged inadequacies in any "custom,  
3 practice, or policy" of the King County Sheriff's Office is DEFERRED to the  
4 Pretrial Conference.

5           14. Motion to exclude evidence regarding any negligent investigation is  
6 DENIED.

7           15. Motion to exclude the University of Florida Brechner Center for  
8 Freedom of Information Report on "Transparency and Media Relations in High-  
9 Profile Police Cases" is GRANTED.

10          16. Motion to exclude evidence obtained through media coverage is  
11 DEFERRED to the Pretrial Conference.

12          17. Unopposed motion to exclude testimony regarding plaintiffs'  
13 emotional distress from litigation is GRANTED.

14          18. Motion to exclude evidence concerning the effect of this shooting on  
15 the local community is GRANTED.

16          19. Motion to exclude reference to any destruction or planting of  
17 evidence is DEFERRED to the Pretrial Conference.

18          20. Motion to exclude witnesses and evidence disclosed by plaintiffs  
19 after the close of discovery is DENIED in part and DEFERRED in part, as  
20 follows:

- 21           a. Tam Q. Dinh, Ph.D.: DEFERRED to the Pretrial Conference;
- 22           b. Damage Witnesses (teachers, staff, classmates): DEFERRED  
23 to the Pretrial Conference;
- c. Molly Ward: DENIED;
- d. William Harmening: DENIED;
- e. Ricardo Fuentes: DEFERRED to the Pretrial Conference;
- f. Dijana Coric: DENIED.

          21. Unopposed motion to exclude reference to possible Federal Bureau  
of Investigation involvement in the case is GRANTED.

          22. Unopposed motion to exclude reference to the U.S. Department of  
Justice's investigation of the Seattle Police Department is GRANTED.

1           23. Motion to exclude photographs of Tommy Le taken at Harborview  
2 Hospital is DEFERRED to the Pretrial Conference. Plaintiffs' counsel shall bring  
3 to the Pretrial Conference the photographs plaintiffs intend to offer, pre-marked  
4 with exhibit numbers.

5           24. Unopposed motion to exclude any suggestion that the election of  
6 Sheriff Mitzi Johanknecht resulted from this incident is GRANTED.

7           25. Unopposed motion to exclude any suggestion that Tommy Le  
8 suffered from mental illness prior to the date of this incident is GRANTED.

9           26. Motion to exclude post-incident suggestions for policy changes is  
10 DEFERRED to the Pretrial Conference.

11           27. Motion to exclude evidence on hedonic damages is STRICKEN as  
12 moot.

13           28. Motion to preclude survival action under RCW 4.20.046 is  
14 STRICKEN as moot.

15           29. Unopposed motion to require the parties to give specific notice  
16 before the close of each court day regarding all witnesses who will be called the  
17 next day is GRANTED.

18           30. Unopposed motion to exclude witnesses from the courtroom until  
19 they testify is GRANTED.

20           (3) Defendant Deputy Molina's motion in limine, docket no. 152, in which  
21 defendant King County joins, is GRANTED in part, DENIED in part, and DEFERRED  
22 in part, as follows:

23           1. Motion to exclude reference to King County providing  
indemnification for Deputy Molina is GRANTED, provided that the Court will  
reconsider if Deputy Molina testifies about his lack of ability to pay an award.

          2. Unopposed motion to exclude reference to the expenses of litigation  
is GRANTED.

          3. Unopposed motion to exclude evidence or argument concerning any  
"prior bad acts" of Deputy Molina is GRANTED.

          4. Unopposed motion to exclude evidence or argument regarding  
Deputy Molina's involvement in a fatal car accident on July 17, 2017, is  
GRANTED.

5. Motion to allow evidence from King County Medical Examiner Brian Mazrim and NMS Labs forensic scientists regarding the presence of LSD in Tommy Le's system at the time of his death is DEFERRED to the Pretrial Conference.

6. Motion to allow evidence regarding Tommy Le's prior drug use for the limited purposes of damages is DEFERRED to the Pretrial Conference.

7. Motion to exclude reference to Deputy Molina conferring with guild counsel is DEFERRED to the Pretrial Conference.

8. Motion to exclude use of the King County Sheriff's Office logo on documents created by plaintiffs or their attorneys for purposes of this litigation is GRANTED.

9. Motion to exclude evidence of any promotion of Deputy Molina following this incident is DENIED.

10. Motion to exclude testimony from King County Master Police Officer Tanner Owens that he was not personally fearful for his own life at the time Deputy Molina shot Tommy Le is DENIED.

11. Unopposed motion to exclude evidence or argument regarding any racially-motivated conduct by Deputy Molina is GRANTED.

12. Motion to exclude argument concerning punitive damages is DENIED.

(4) Counsel shall be prepared to address at the Pretrial Conference on May 30, 2019, at 9:00 a.m., all deferred portions of the motions in limine.

(5) The Clerk is directed to send a copy of this Minute Order to all counsel of record.

Dated this 28th day of May, 2019.

William M. McCool  
Clerk

s/Karen Dews  
Deputy Clerk